

\$~
*
%

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Judgment: 13.01.2017

+ W.P.(C) 4345/2015 & C.M. Nos.7865/2015, 11796/2015 &
19313/2015

BABU RAM SINGLA

..... Petitioner

Through Mr. Ravi Sikri, Sr. Adv. with Mr.
Deepak Yadav, Adv.

versus

EAST DELHI MUNICIPAL CORPORATION & ORS.

..... Respondents

Through Mrs. Biji Rajesh, Adv for R-1.
Mr. Kirti Uppal, Sr. Adv with Mr.
Sidharth Chopra and D. Rajeshwar
Rao, Advs for R-2 & R-3.
Mr. Satyakam, ASC with Mr. Naveen
Jhakar, Advs for R-4 & R-5 along
with SI Hawa Singh.

+ W.P.(C) 11542/2015 & C.M. No.30545/2015
**EAST DELHI MUNICIPAL CORPORATION THROUGH ITS
COMMISSIONER**

..... Petitioner

Through Mrs. Biji Rajesh, Adv

versus

BABU RAM SINGHLA

..... Respondent

Through Mr. Ravi Sikri, Sr. Adv. with Mr.
Deepak Yadav, Adv.

CORAM:

HON'BLE MS. JUSTICEINDERMEET KAUR

INDERMEET KAUR, J. (oral)

Signature Not Verified

Signing Date:05.10.2024 17:15:06
Certify that the digital and physical file have
been compared and the digital data is as per
the physical file and no page is missing.

1 Both these petitions shall be decided by a common order. The petitioner (in W.P. (C) No.4345/2015-Babu Ram Singla) has impugned the order dated 27.04.2015 passed by the Monitoring Committee wherein the Monitoring Committee had passed a direction that the premises in question (A-139/140, A-32 & A-32A, Madhu Vihar, Delhi) - (hereinafter referred to as the demised premises) be re-sealed. The submission of the learned senior counsel for the petitioner is that such an order could not have been passed by the Monitoring Committee, neither did the Monitoring Committee have the power and nor the authority to order a re-sealing of the property; nor was this order based on the principles of natural justice; such an order being arbitrary and illegal, the same is liable to be set aside.

2 The second petition (W.P. (C) No.11542/2015) has been filed by the East Delhi Municipal Corporation (hereinafter referred to as the respondent-EDMC). They are aggrieved by the order dated 08.04.2015 passed by the Appellate Tribunal of the Municipal Corporation of Delhi (ATMCD) wherein the ATMCD had directed the demised premises to be de-sealed; the petitioner Babu Ram Singla had been directed to furnish an affidavit that he would pay all the necessary charges to the MCD regularly; he would not carry out any unauthorized construction in the property.

3 Record shows that the petitioner had been granted a municipal license (dated 02.11.2016) qua the aforementioned property to run a sweet shop from the demised premises. Pursuant to the judgment of the Apex Court in M.C. Mehta Vs. Union of India & Ors. (in I.A. No.22 in W.P. (C) No.4677/1985 dated 30.04.2013) non-conforming user of residential properties had been directed to be sealed. On 29.11.2006, the premises of the petitioner were sealed. In an intervening period, they were de-sealed in February, 2008 but were again sealed on 27.08.2009; this sealing order was passed by the Monitoring Committee; it was premised on the mis-use and unauthorized construction in the demised premises.

4 The representations made by the petitioner were left un-heard.

5 On 30.04.2013, the Apex Court in M.C. Mehta had granted opportunity to the general public to approach the ATMCD for the purpose of getting their properties de-sealed (which had in fact been de-sealed by the municipal authorities).

6 The order dated 08.04.2015 had been passed by the ATMCD in favour of the petitioner; his property had been directed to be de-sealed. The order passed by the ATMCD has been perused; the highlighted portion by the respective parties has also been perused. The vehement submission of the

respondent is that this order is largely premised on the submission that after passing of the National Capital Territory of Delhi Laws (Special Provisions) Second Amendment Act, 2011 (hereinafter referred to as the Special Act) all constructions carried out up to 01.06.2014 are protected from punitive action; the property of the petitioner which was built prior in time had been granted a protection; the ATMCD had however gone on to pass the second part of the order which is illegal and is to the effect that the property of the petitioner be de-sealed. Submission of the learned counsel for the respondent on this score being that such an order could not have been passed while relying upon the provisions of the Special Act.

7 Learned counsel for the respondent however does not dispute the fact that the ATMCD otherwise has wide appellate powers under Section 347-B of the DMC Act and this includes the power to order a de-sealing of the properties; submission however being that such an order could not have been passed in the instant case. The Special Act only protects an unauthorized construction from being demolished; a status quo order could at best have been passed by the ATMCD; the ATMCD going on to hold that the property should at the same time be de-sealed has committed an illegality and this illegal order is thus liable to be set aside.

8 It is not in dispute that after the order dated 08.04.2015, the property had been de-sealed on 13.04.2015. Thereafter on an order being passed by the Monitoring Committee on 27.04.2015 (subject matter of the first writ petition), the property had again been sealed on 28.04.2015.

9 Relevant would it be to note that the Monitoring Committee has been constituted under the aegis of the Supreme Court in the case of M.C. Mehta (Supra) on 24.3.2006. The powers and procedure to be followed by the Monitoring Committee has been detailed in para 8 of a subsequent order (dated 30.04.2013 passed by the Apex Court) (I.A. No.22 in W.P. (C) No.4677/1985) in M.C. Mehta. Para 8 sub-para (vi) and (vii) are relevant. It states that where a property is sealed, it would be open to such an applicant to approach the Corporation for an order of de-sealing; if an order is passed in favour such an applicant the Monitoring Committee may recommend to the MCD/NDMC/DDA to prefer a writ petition against such an order before the High Court. Thus these powers which had been granted to the Monitoring Committee by the Apex Court were only recommendatory powers i.e. a power to recommend to the Corporation to file a petition in the High Court against an order of de-sealing,

10 The order dated 27.04.2015 is definitely not a recommendation; it was an order directing the MCD to re-seal; the property.

11 The Monitoring Committee in its order dated 27.04.2015 has recorded the reasons for deciding to re-seal the property. These are contained in paragraph 5. The aforementioned paragraph reads as under:-

"As per the record received from Shahdara South Zone/EDMC, the said property has been de-sealed on 13.04.2015. The Monitoring Committee has observed the following:-

1 *The affidavit cum undertaking filed before the Hon'ble Tribunal is not in terms of directions dated 08.04.2015 of the Hon'ble Tribunal. Further as per the order dated 08.04.2015 of the Hon'ble Tribunal, the affidavit be submitted before the Tribunal and copy to the concerned Deputy Commissioner and once it is accepted by the Tribunal then the property in question be de-sealed thereafter within 7 days.*

2 *The copy of the affidavit and undertaking has not been filed with concerned Deputy Commissioner.*

3 *The de-sealing was carried out on 13.04.2015 by Shahdara South Zone/EDMC with the help of Police Force but nowhere the date and time is recorded in the file.*

4 *The Photographs taken at the time of sealing on 27.08.2009 and Videography done at the time of de-sealing on 13.04.2015 clearly shows*

that the status of construction is not same and unauthorized construction has also taken place during the period when the property was lying sealed.

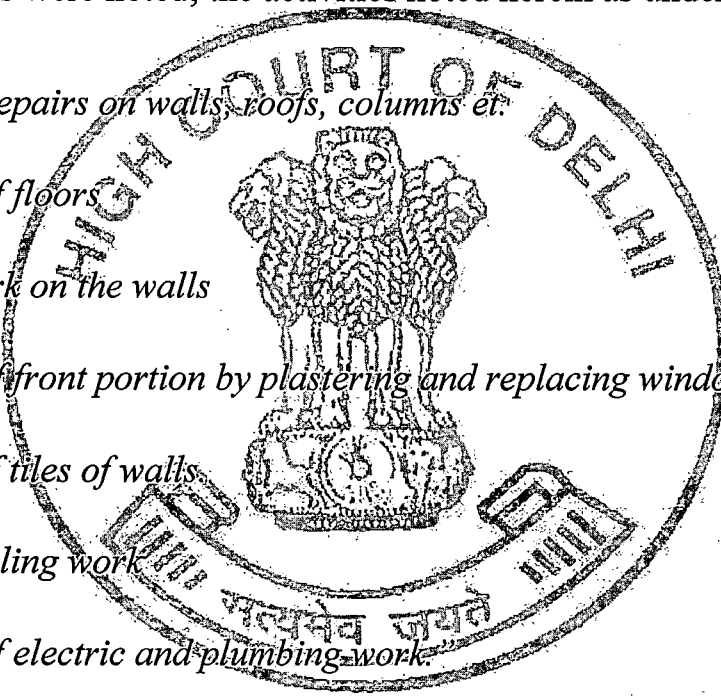
5 *The CDs recorded on de-sealing day i.e. 13.04.2015 and thereafter on 23.04.2015 (under the orders of the Monitoring Committee) by the Shahdara South Zone/EDMC clearly show that repairs and addition/alteration was in progress which is not permissible and tantamount to unauthorized construction in the property in question. This is not permissible as per MPD-2021 and BBL."*

12 Admittedly, between the period i.e. between 27.08.2009 to 13.04.2015 the custodian of the property was the Corporation as the property was lying sealed. Thus sub-para 5 would alone be relevant. The Monitoring Committee was of the view that in this intervening period i.e. from 13.4.2015 upto 23.04.2015, certain repairs and addition/alteration were done which were not permitted.

13 In the course of these proceedings, certain orders came to be passed by this Court. The order dated 05.05.2015 is relevant. The predecessor Bench of this Court was prima-facie of the view that the Monitoring Committee can only direct the Corporation to challenge the orders passed by the Appellate Tribunal before the High Court and it cannot suo moto override the order passed by the Appellate Tribunal. On 12.05.2015, a direction had been

given to the Corporation to examine the reasons for re-sealing of the property.

14 Two status reports have been filed by the Corporation. The first status report is dated 14.05.2015 and in this report, it has been stated that the inspection of the property had been carried out on 13.05.2015 wherein certain activities were noted; the activities noted herein as under:-

- 
- The seal of the High Court of Delhi is circular, featuring the Ashoka Lion Capital in the center. The text "HIGH COURT OF DELHI" is written in a semi-circle at the top, and "सत्यमेव जयते" is written in Devanagari script at the bottom. The seal is partially overlaid by the list of activities.
- "(i) Plaster repairs on walls, roofs, columns et.*
 - (ii) Repair of floors*
 - (iii) POP work on the walls*
 - (iv) Repair of front portion by plastering and replacing windows.*
 - (v) Fixing of tiles of walls*
 - (vi) False ceiling work*
 - (vii) Repair of electric and plumbing work.*

15 The status report further states that these works which were being carried out by the petitioner were permitted under clause 6.4.1 of the Building Byelaws and no permission was required from the respondent for the said works.

16 This status report thus clearly shows that the Monitoring Committee directing re-sealing of the property has committed a folly.

17 The subsequent status report is contrary to the first status report. This status report is dated 20.08.2016. While reiterating the stand in its earlier status report dated 13.04.2015, the EDMC has noted that the aforementioned work being carried out by the petitioner yet the benefit of Byelaw 6.4.1 could not be extended to the petitioner as permission of the Competent Authority was required.

18 This Court is of the view that these two status reports are clearly in conflict to one another. The first report states that the acts of the petitioner are protected under Byelaw 6.4.1 yet the second status report while reiterating that the some addition/alteration had been carried out by the petitioner has drawn a different conclusion concluding that the benefit of clause 6.4.1 cannot be extended to the petitioner as permission had not been taken. The respondent is blowing hot and cold. In the first report, it states that clause 6.4.1 does not require permission from the Competent Authority to carry out such works yet in the second report it states that since permission had not been taken under Byelaw 6.4.1, the benefit of 6.4.1 cannot be granted to the petitioner.

19 Noting this narration of facts, this Court is of the view that the order passed by the Monitoring Committee on 27.04.2015 clearly suffers from an illegality. It was only a Recommending Body and being only advisory in nature it could at best have made a recommendation to the local body to assail such an order of de-sealing by preferring a writ petition. The order passed by the Monitoring Committee being in the nature of a positive mandate was thus an illegality; it could not have been passed. It was also not premised on a correct factual position. The works noted to have been carried out by the petitioner were repair works as is clear from the first status report of the Corporation and this was permitted under Clause 6.4.1.

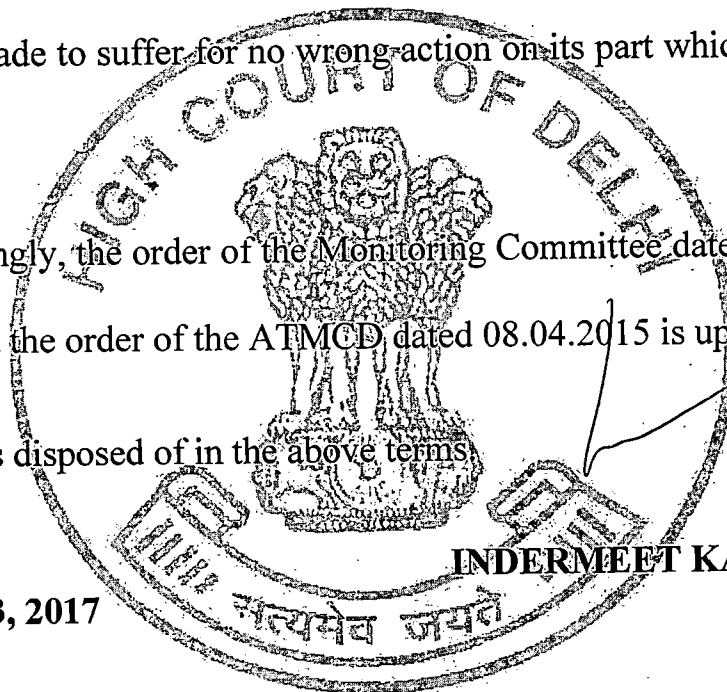
20 The earlier order passed by the ATMCD (08.04.2015) directing the Department to de-seal the property is a reasoned order; it does not suffer from any infirmity. The ATMCD while noting that the Special Act is a protective umbrella available to the petitioner and his property cannot be demolished having been constructed prior to the cut-off date 01.06.2014 had thereafter gone on in the subsequent paragraph to discuss the various documents relied upon by the petitioner (license by the MCD since the year 2000, CNGF Bills, Delhi Jal Board Bills, Electricity Bills, DDA notices etc.) regarding use of property as commercial; order of the Court of Sh. Rajneesh

41

K. Gupta stating commercial use since 12.11.2002; the sales tax registration certificate dated 04.08.1994; house tax notice dated 20.03.1998 and the MCD license since 1990. The Department was only thereafter directed to de-seal the property; the petitioner had also been directed to file an affidavit that he will not carry out any further unauthorized construction and will pay all necessary charges to the MCD. This order was a perfectly legal order as no party can be made to suffer for no wrong action on its part which is so in the instant case.

21 Accordingly, the order of the Monitoring Committee dated 27.04.2015 is set aside and the order of the ATMCD dated 08.04.2015 is up-held.

22 Petitions disposed of in the above terms



INDERMEET KAUR, J

JANUARY 13, 2017

A